

MEMORANDUM OF AGREEMENT
Concerning
Installation of Best Available Retrofit Technology on Major Stationary Sources in
Utah that Potentially Impact Visibility at Mandatory Federal Class I Areas
Between
State of Utah
and
U. S. Department of the Interior

BACKGROUND:

The purpose of this MOA is to establish criteria for certification of "reasonably attributable" visibility impairment by the U.S. Department of the Interior (DOI) from its date of execution until full implementation of the regional program in 2018. Between the date of signature of this memorandum of agreement and 2018, the State of Utah and the U.S. Department of the Interior agree to the criteria listed below for certification of visibility impairment under the 1980 visibility protection rules incorporated in the state implementation plan at R307-110-28 of the Utah Administrative Code.

Section 169A of the *Clean Air Act (CAA)* (42 USC §§ 7491) requires States to address visibility impairments in mandatory Federal Class I areas -- consisting of certain National Parks, National Wilderness Areas, and Memorial and International Parks subject to restrictive limits on allowable air pollution. Strategies for addressing air pollution mandated by the *CAA* include the installation of Best Available Retrofit Technology (BART) at some existing pollution emitting facilities. BART is used to address visibility impairments in two principal forms: "reasonably attributable" impairment (impairment attributable to a single source or a small group of sources) and regional haze (widespread haze from a multitude of sources which impairs visibility in every direction over a large area).

BART for "reasonably attributable" impairment is concerned with major stationary sources of emissions that meet certain size, type and age requirements and are reasonably anticipated to contribute to visibility impairments in Class I areas. In 1980, the U.S. Environmental Protection Agency (EPA) promulgated regulations -- codified at 40 CFR §§ 51.300-07 -- that include provisions to implement BART requirements for sources near Class I areas. Under these regulations, a Federal Class I area Land Manager (FLM) is authorized to "certify" to a State, at any time, that an impairment of visibility is "reasonably attributable" to a stationary source, or a small number of stationary sources. The FLM has full discretion in determining criteria for its certification of visibility impairment. After certification by the FLM, the State is required to make its own determination on whether the source or sources cause or contribute to the visibility impairment. If such a determination is made, the State must conduct an analysis to determine the appropriate BART level of control for such source or sources.

EPA has also issued regional haze regulations -- Codified at 40 CFR 51.308-09 -- that require States to consider BART in the context of stationary sources' contribution to regional haze visibility impairment. States may meet regional haze BART requirements through the establishment of alternative control measures, including market based trading programs. BART requirements for a source established under the regional haze program may satisfy BART requirements for that source's contribution to "reasonably attributable" impairment.

Only states that contain mandatory Federal Class I areas are subject to these regulations. The State of Utah contains mandatory Federal Class I areas as defined by the CAA. On November 17, 2003, the Utah Air Quality Board adopted an implementation plan to address BART requirements for major stationary sources of sulfur dioxide through a multi-state regional cap and back-stop market trading program under the regional haze regulations. Utah's BART requirements will not be fully satisfied until the regional program matures in 2018. Under the discretion granted the FLM by the EPA visibility protection regulations, this MOA establishes criteria for certification of "reasonably attributable" visibility impairment by the U.S. Department of the Interior (DOI) from its date of execution until 2018. Between the date of signature of this memorandum of agreement and 2018, the State of Utah and the U.S. Department of the Interior agree to the criteria listed below for certification of visibility impairment under the 1980 visibility protection rules incorporated in the state implementation plan at R307-110-28 of the Utah Administrative Code.

Criteria for Federal Land Manager Certification of "Reasonably Attributable" Visibility Impairment for State Specific Source BART Review

DOI will only certify "reasonably attributable" visibility impairments from sources in Utah emitting sulfur dioxides in the following circumstances:

1. the U.S. Department of the Interior determines that sulfate concentrations are not decreasing since the year 2000, based on ambient monitoring, and
2. there are BART-eligible sources of sulfur dioxide within 150 kilometers of the mandatory Federal Class I area, and
3. the BART-eligible sources have not installed control technology to reduce sulfur dioxide emissions at a rate equivalent to capture of 85% of potential annual emissions.

The above criteria do not require DOI to certify a "reasonably attributable" visibility impairment from any source, and DOI may, in its sole discretion, choose not to certify a source regardless of the above criteria, if appropriate. In addition to the criteria, the State of Utah and the U.S. Department of the Interior agree to provide information related to visibility impairment associated with regional emissions of sulfur dioxide, in a public forum, no later than the end of 2013, to allow private interests to plan future sulfur dioxide emissions reductions under the multi-state regional cap and backstop market

trading program in a manner that addresses reasonably attributable BART requirements. The information will include, but not be limited to, disclosure of areas where the criteria are not being met or are likely to not be met by 2018, and conditions where new visibility related monitoring or modeling uncovers unique source-receptor relationships.

Additional Considerations for Certifying Sources Under the Criteria

The U.S. Department of the Interior also commits to discussions with the State of Utah and the owner-operators of BART eligible sources that may be affected by a certification under the criteria noted above, for the purposes of discussing: 1) the future plans for controlling sulfur dioxide emissions from the source, 2) the expectations of the State of Utah in how sulfate concentrations will be affected by future reductions of regional emissions under the cap and market-backstop program, and 3) whether the sulfate concentrations seen at the Class I area in question are affected by sources outside of the cap region or changes in sulfur dioxide emissions from beyond the United States. The U.S. Department of the Interior agrees to take these factors into consideration before certifying impairment it believes is reasonably attributable to a specific BART eligible source.

Interim Review of Emissions Data


The U.S. Department of the Interior will review ambient air quality data and other technical information, including air quality modeling, to determine the need for addressing reasonable progress through a certification for reasonably attributable impairment no later than the end of 2013. The U.S. Department of the Interior recognizes that the owners and operators of BART eligible sources covered by the sulfur dioxide regional cap and back-stop trading program will need to commit to controls or be financially prepared to purchase allocations for emissions in the last five years of the trading program in order for the region to meet its goal. In this regard, such sources would benefit by knowing whether the regional program, by the year 2013, has afforded protection to all of the Class I areas by contributing to reductions in sulfate concentrations. Information on visibility impairment at Class I areas and the relationship of trends in particulate sulfate concentrations will be shared by the U.S. Department of the Interior with the State of Utah and interested parties as soon as available. The FLM commits to bring all available relevant information to the State of Utah's public meeting related to planning of future sulfur dioxide emissions reductions and related BART concerns. This sharing of information is intended to promote the resolution of all likely certification cases under the cap and backstop market operation.

General Provisions

- A. This agreement is not intended to, nor shall it, vest any rights in persons who are not parties to this agreement. The obligations and responsibilities contained in this agreement are subject to the availability of funding, and are intended for guidance of the parties. They may not serve as the basis for any third party challenges or appeals.
- B. Modification of this agreement must be in writing and upon approval of the Parties to the agreement.

- C. If a Party intends to withdraw from this agreement, such withdrawal must be in writing with at least thirty days advance notice.
- D. This agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original agreement. The date of execution shall be the date of the last Party's signature.

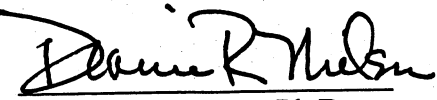
For the U.S. Department of the Interior



Craig Manson
Assistant Secretary for Fish and Wildlife and Parks

Date: JAN 26 2005

For the State of Utah



Dianne R. Nielson, Ph.D.
Executive Director
Utah Department of
Environmental Quality

Date: 11/12/04